

FILED 09 MAY 20 11 04 USDC-ORH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JACKIE RICHARD GREGG)	
)	
Petitioner,)	No. CV 07-984-CL
)	
v.)	
)	ORDER
BRIAN BELLEQUE,)	
)	
Respondent.)	
_____)	

PANNER, J.

Jackie Gregg brings this petition for relief under 28 U.S.C. § 2254. Gregg contends his 240-month sentence violates Blakely v. Washington, 542 U.S. 296 (2004), and Apprendi v. New Jersey, 530 U.S. 466 (2000), because the state court imposed a sentence exceeding the presumptive sentence, on the basis of facts not determined by a jury beyond a reasonable doubt. The Federal Defender was appointed to represent Gregg in this matter.

On April 27, 2009, Magistrate Judge Clarke filed his Report and Recommendation. Judge Clarke concluded this action is a second or successive petition. As yet, the United States Supreme

Court has not declared that Blakely or Apprendi apply retroactively to cases on collateral review. Judge Clarke therefore recommended that Gregg's petition be dismissed, with leave to refile if and when Gregg obtains certification from the Court of Appeals in accordance with 28 U.S.C. § 2244(b)(3)(A).

The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Although no objections have been timely filed, this court still must review the legal principles *de novo*. See Lorin Corp. v Goto & Co., Ltd., 700 F.2d 1202, 1206 (9th Cir. 1983) (absence of objection does not relieve "district court of its obligation . . . to decide for itself whether the Magistrate's report is correct"). I find no error.

Conclusion

Magistrate Judge Clarke's Report and Recommendation (docket # 31) are adopted. Gregg's petition (docket # 1) is dismissed as a second or successive petition, with leave to refile if and when Gregg obtains certification from the Court of Appeals in accordance with 28 U.S.C. § 2244(b)(3)(A).

IT IS SO ORDERED.

DATED this 20 day of May, 2009.



OWEN M. PANNER

UNITED STATES DISTRICT JUDGE